

REMARKS

Claims 1-20 are pending in the present application. Claims 1-4, 6-8, 11 and 20 have been amended in this response. Claim 19 has been cancelled.

In the Office Action dated May 15, 2008, the Examiner objected to the disclosure because of certain informalities. Paragraph [0010] has been amended to address this objection. Applicants request that the Examiner withdraw this objection.

In the Office Action dated May 15, 2008, the Examiner objected to the specification as failing to provide proper basis for the claimed subject matter. Specifically, the Examiner noted that in claim 12, applicants are claiming the metals gold, platinum, and palladium; however, platinum and palladium are not found in the specification. Applicants note that platinum and palladium were included, along with gold, in Claim 12 as filed as part of the original specification (See 37 CFR 1.75(a)). However, Applicants have amended paragraph [0025] to include platinum and palladium in the detailed description as examples of x-ray opaque materials, along with gold, as supported by original Claim 12. Applicants request that the Examiner withdraw this objection.

In the Office Action dated May 15, 2008, the Examiner advised Applicants that should claim 17 be found allowable, claim 19 will be objected to as being a substantial duplicate thereof. Applicants have, without prejudice, cancelled Claim 19.

In the Office Action dated May 15, 2008, the Examiner objected to Claims 1 and 6 because of certain informalities. Applicants have amended Claims 1 and 6 to address these objections and respectfully request that the Examiner withdraw these objections.

In the Office Action dated May 15, 2008, the Examiner rejected Claims 7-10 because the specification does not reasonably provide enablement for "radiopaque material filling a lumen of a tube." For clarification, Applicants have amended Claim 7 to recite that "the cover layer comprises a hollow wire and the marker element comprises radiopaque material filling the hollow wire", as described in paragraph [0011]. Applicants believe that this obviates the examiner's rejection and Applicants respectfully request that the Examiner withdraw this rejection.

In the Office Action dated May 15, 2008, the Examiner rejected Claims 1-19 as being indefinite. Applicants have amended Claim 1 to recite that a stent has a metallic, at least partially radiolucent carrier structure and Applicants have amended Claim 2 to recite that the carrier structure includes legs and apertures for marker elements and that the marker elements are welded into the apertures. Applicants believe that this obviates the examiner's rejection and Applicants respectfully request that the Examiner withdraw this rejection.

In the Office Action dated May 15, 2008, the Examiner rejected Claims 1, 5, 12, and 15-20 as being anticipated by Kranz et al. (6,312,456), and Examiner rejected Claims 5 and 17-19 as being unpatentable over Dang (6,471,721) as applied to claim 1 in view of Kranz et al. (6,312,456).

Claim 1 has been amended to recite, in pertinent part, that a stent has a metallic, at least partially radiolucent self-expanding carrier structure comprising a cut out metal tube at least partially of a titanium-nickel alloy, and that at least one marker element, which includes comparatively radiopaque material, is attached to the rest of the carrier structure and that the radiopaque material is completely enclosed by a cover layer of a material other than the radiopaque material, the cover layer including a metal or a metal compound including the titanium-nickel alloy. None of the art of record shows or suggests, alone or in combination such a stent.

The Examiner stated that Dang discloses a device that may be comprised of nitinol, which is a nickel-titanium alloy. The Examiner then concluded that a device according to Dang comprised of nitinol must inherently be self-expanding and include a carrier according to the applicants' claims. Applicants note that Dang is concerned with an expandable stent and not a self-expanding stent. Merely mentioning Nitinol (a nickel-titanium alloy) as a potential material for a stent (see US 6,471,721, col. 5, line. 19) does not make the stent a self-expanding stent. The creation of a self-expanding stent is not just a choice of materials, but also a choice of particular design. This is a necessity. None of the prior art of record shows or suggests a metallic, at least partially radiolucent self-expanding carrier structure as recited in independent Claim 1.

Further, none of the art of record shows or suggests a stent having a metallic, at least partially radiolucent self-expanding carrier structure of a titanium-nickel alloy, and a marker element which includes a comparatively radiopaque material completely enclosed by a cover layer including a metal or a metal compound including the titanium-nickel alloy, wherein the marker element is attached to the rest of the carrier structure, as recited in independent Claim 1. Simply, none of the art of record shows or suggests a stent having a titanium-nickel alloy carrier structure and a marker completely enclosed by a cover including the same titanium-nickel alloy (emphasis added). For example, Dang discloses grooves in stents, where marker material is filled in and that later on are closed by sputtering.

Thus, in light of the above amendments and for the reasons stated above, it is believed that amended Independent Claim 1 is patentable over the art of record and Applicants request that the Examiner withdraw the rejections of Claim 1.

Regarding Claims 3-6, 11-12, and 15-18, these claims are all dependent from Independent Claim 1 and contain all of the limitations recited therein. Accordingly, Applicants believe that Claims 3-6, 11-12, and 15-18 are patentable over the art of record and respectfully request that the Examiner withdraw the rejections of these claims.

Regarding Claim 20, the method of Claim 20 has been amended to recite implanting a self-expanding stent similar to the stent recited in Claim 1. Therefore, for the reasons stated above, the Applicants believe that Claim 20 is patentable over the art of record and respectfully request that the Examiner withdraw the rejections of this Claim.

Regarding Claim 2, Claim 2 has been rewritten in independent form and amended to recite, in pertinent part, a stent including a carrier structure including legs and apertures for marker elements, and marker elements, wherein the marker elements are welded into said apertures. None of the art of record shows or suggests such a stent.

The Examiner stated that the grooves of Dang comprise apertures for marker elements. Applicants note that grooves, as shown and explained in Dang, as generally understood by one skilled in the art, and recited in the dictionary, are long narrow channels or depressions in the

surface of something; apertures as shown and explained in the present application, as generally understood by one skilled in the art, and recited in the dictionary are open spaces or holes through something. Even when given the broadest, most reasonable meaning, grooves most certainly do not comprise apertures.

Thus, in light of the above amendments and for the reasons stated above, it is believed that amended Independent Claim 2 is patentable over the art of record and Applicants request that the Examiner withdraw the rejections of Claim 2.

Regarding Claims 13-14, these claims are both dependent from Independent Claim 2 and contain all of the limitations recited therein. Accordingly, Applicants believe that Claims 13-14 are patentable over the art of record and respectfully request that the Examiner withdraw the rejections of these claims.

Regarding Claim 7, Claim 7 has been rewritten in independent form and amended to recite, in pertinent part, a stent having a metallic, at least partially radiolucent carrier structure, and a marker element which includes comparatively radiopaque material, wherein the marker element is attached to the carrier structure and the radiopaque material is completely enclosed by a cover layer, wherein the cover layer comprises a hollow wire and the marker element comprises radiopaque material filling the hollow wire (emphasis added). None of the art of record shows or suggests such a stent.

Thus, in light of the above amendments and for the reasons stated above, it is believed that amended Independent Claim 7 is patentable over the art of record and Applicants request that the Examiner withdraw the rejections of Claim 7.

Regarding Claims 8-10, these claims are all dependent from Independent Claim 7 and contain all of the limitations recited therein. Accordingly, Applicants believe that Claims 8-10 are patentable over the art of record and respectfully request that the Examiner withdraw the rejections of these claims.

In light of the above amendments and for the reasons stated above Applicants believe that the rejection of the claims has been obviated and that the claims are currently in condition for allowance. A notice thereof is respectfully requested.

The outstanding Office Action was electronically transmitted on 15 May 2008. The Examiner set a shortened statutory period for reply of 3 months from the mailing date.

Therefore, the Applicants believe that this response is timely filed. The Applicants, however, hereby make a conditional petition for any further necessary extensions of time for response in the event that such a petition is required. The Commissioner is authorized to charge any fee required with the filing of this paper or to credit any overpayment to Deposit Account 15-0450.

Respectfully submitted,

Date: August 15, 2008
Hahn Loeser & Parks LLP
One GOJO Plaza, Suite 300
Akron, OH 44311

/James D. Schweikert/
James D. Schweikert
Reg. No. 58,057

Phone 330-864-5550
Fax 330-864-7986

jschweikert@hahnlaw.com